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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**SEALED
BY COURT ORDER**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO)

EDL

CV 15 1188
Case No.

UNITED STATES OF AMERICA, and
STATE OF CALIFORNIA, *ex rel.*
DEBORAH CULLEN,

Plaintiff and Relator,

vs.

ASSOCIATION OF BEHAVIOR
CONSULTANTS, WILLIAM J. PALYO,
and DOES 1-20,

Defendants.

COMPLAINT WITH JURY DEMAND

Causes of Action on Behalf of U.S.

1. Knowingly Presented, or Caused to Be Presented, a False or Fraudulent Claim for Payment or Approval, in Violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A)

2. Knowingly Made, Used, or Caused to Be Made or Used, a False Record or Statement Material to a False or Fraudulent Claim, in Violation of 31 U.S.C. § 3729(a)(1)(B)

Causes of Action on Behalf of State of California:

3. Knowingly Presented a False Claim for Payment or Approval, in Violation of the California False Claims Act, Cal. Gov. C. § 12651(a)(1)

4. Knowingly Submitted a False Record or Statement to Get a False Claim Paid or Approved, in Violation of the California False Claims Act, Cal. Gov. C. § 12651 (a)(2)

5. Failure of Beneficiary of False Claim to Disclose False Claim within Reasonable Time after Discovery, in Violation of Cal. Gov. Code § 12651(a)(8).

**[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT AND THE
CALIFORNIA FALSE CLAIMS ACT]**

Introduction

1. This is a False Claims Act *qui tam* case in which Plaintiff/Relator Deborah Cullen, pursuant to the Federal False Claims Act ("FCA") and the California False Claims Act ("CFCA"), sue to recover damages and civil penalties on behalf of the United States of America and the State of California, arising out of false or fraudulent billing claims by Defendants.

2. Defendants made false claims to the United States and to the State of California, and other government entities in the State of California, in the form of fraudulent billing.

3. Relator alleges the following five numbered causes of action against the named Defendants:

#1: Knowingly Presented, or Caused to Be Presented, a False or Fraudulent Claim for Payment or Approval, in Violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A);

#2: Knowingly Made, Used, or Caused to Be Made or Used, a False Record or Statement Material to a False or Fraudulent Claim, in Violation of 31 U.S.C. § 3729(a)(1)(B);

#3: Knowingly Presented a False Claim for Payment or Approval, in Violation of the California False Claims Act, Cal. Gov. C. § 12651(a)(1);

#4: Knowingly Submitted a False Record or Statement to Get a False Claim Paid or Approved, in Violation of the California False Claims Act, Cal. Gov. C. § 12651 (a)(2);

#5: Failure of Beneficiary of False Claim to Disclose False Claim within Reasonable Time after Discovery, in Violation of Cal. Gov. Code § 12651(a)(8).

Plaintiff/Relator

4. Relator Deborah Cullen, of Santa Rosa, California, is a behavioral support specialist who does hands-on work with disabled children. She worked for Defendant Association of Behavior Consultants, Inc., of Santa Rosa, California. Her work, entailing assignments per child lasting on average 1½ to 2 years, was in Marin County, Sonoma County, and Napa County, California. From her hire date in May 1999, to her last day of employment on February 28, 2014, Relator was employed by Defendant ABC as a behavioral consultant specialist, doing hands-on work with special needs children in Marin, Napa, and Sonoma counties in Northern California,

via the North Bay Regional Center, the Novato Unified School District, the Sebastopol School District, the Santa Rosa City School District, the Sonoma County Office of Education, Rincon Valley School District, and the early preschool intervention programs, Redwood Constortium Preschool Program. In the work Cullen would do, each case on average would last 1½ to 2 years. She regularly and accurately submitted to ABC her hours worked, via a time sheet. Her employer Association of Behavior Consultants fired her following her discovery of fraudulent billing of hours and expenses by ABC, and her consequent refusal to acquiesce in such fraudulent billing.

Defendant Association of Behavioral Consultants, Inc. ("ABC")

5. Association of Behavior Consultants, Inc. ("ABC"), is a California corporation, with headquarters located at 3808 Zieber Road, Santa Rosa, CA 95404. According to its website, <http://www.specialeducationadvisor.com/association-of-behavior-consultants-inc-1a-49-018/>, ABC's work is to "provide behavior intervention developers and behavior intervention implementers to children 3 – 21 with developmental disabilities. Full inclusion and discrete trial training for autistic children also available." ABC contracts with the North Bay Regional Center, for funding tied to Social Security, MediCal, and other State of California funding. Regional Center case managers closely aligned with ABC supervisors distribute the contracts, and this is where the overstepping of funding boundaries occurred, and continues to occur. On average, Defendant ABC had, and has, eight to ten staff, working approximately 870 cases a year in Sonoma, Napa, and Marin counties. A privately held company founded in 1979, ABC has \$7.42 million in estimated annual revenue.

6. ABC consists of owner and CEO William J. Palyo, Program Directors, Program Coordinators, Program Administrators, Behaviorists/Supervisors, and Support Specialists.

Individual Defendant William J. Palyo

7. Individual Defendant William J. Palyo ("Palyo"), at all times alleged herein, was, and is, the CEO and principal of ABC. Now a multi-millionaire, Mr. Palyo once asserted, "I raised four kids – I have a lot of integrity." A former San Francisco police officer, Mr. Palyo has two or three other police officers involved in the ABC business.

False Claims

8. ABC is a “fee for service” company that acquires contracts through parents, insurance services, the Regional Centers, and more. ABC provides services to families receiving MediCal services for their children. Almost all of these individuals are Federal SSI and MediCal recipients. The Regional Center distributes vendor funding for individuals with disabilities, and developmental delays receiving Federal and State certification for funding. The Regional Center and Educational funding sources are block grants obtained through the State and Federal Government for these clients. Depending on the type of contract, the services are billed through the Regional Center, County Offices of Education, privately, and Medical Insurance. ABC maintains vendor services funded through the Regional Center based on the individual needs of the client. ABC over billed these contracts with the Regional Center, insurance companies, and the respective County Offices of Education.

9. ABC contracts with the multiple vending agencies distributing funds under federal and state block grant programs. Several of the administrators and payroll personnel work for both ABC and the government funding agencies. Such individuals are enmeshed, in the inner workings of the financial vending portion of contracts for non-profit agencies, among both the Sonoma Valley School District, Santa Rosa City School District, Marin County Office of Education, North Bay Regional Center, Sonoma County Office of Education, Napa Office of Education, Petaluma Valley School District, Rincon Valley School District, Redwood Consortium and Sebastopol City School District.

10. ABC works within at least six different counties of California, servicing children, families, and adults with developmental delays. ABC contracts services through the Regional Centers and Offices of Education within Sacramento County, Sonoma County, Mendocino County, Solano County, San Francisco County, and Marin County.

11. There is a very high level of enmeshment of these program directors, coordinators, and administrators among the three different agencies, ABC, the Regional Centers, and Offices of Education. For example: The Napa Office of Education employs Jody Neeson in the Non-intensive preschool program, who is a Program Administrator/Behaviorist/Supervisor of ABC

17. In performing the acts particularly set forth above, Defendants defrauded the United States of America, by knowingly presenting, or causing to be presented, to one or more officers or employees of the United States of America, a false and fraudulent claim for approval or payment for Medi-Cal, with an implied certification of compliance with all Federal eligibility laws, in contravention of the Federal False Claims Act (31 U.S.C. § 3729(a)(1)(A)), to the damage of the treasury of the United States of America, by causing the United States to pay out money it is not obligated to pay.

18. By engaging in the above-referenced conduct, Defendants knowingly presented, or caused to be presented, a false or fraudulent claim for payment or approval, in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A).

19. As a direct and proximate result of Defendants' aforesaid conduct, the United States suffered, and is entitled to recover, actual damages, trebled and with per-incident penalties and statutory attorney fees.

SECOND CAUSE OF ACTION

Knowingly Made, Used, or Caused to Be Made or Used, a False Record or Statement Material to a False or Fraudulent Claim, in Violation of 31 U.S.C. § 3729(a)(1)(B)

20. The above allegations of Paragraphs 1-13, common to each and every cause of action set forth herein, are incorporated herein by reference, the same as fully set forth within this Cause of Action.

21. By virtue of the particular acts described above, Defendants knowingly made, used, or caused to made or used a false or fraudulent record or a false or fraudulent statement material to getting a false or fraudulent claim paid or approved by the United States of America, in contravention of the Federal False Claims Act (31 U.S.C. § 3729(a)(1)(B)) to the damage of the Treasury of the United States of America, by causing it to pay out money it was not obligated to pay.

22. By engaging in the above-referenced conduct, Defendants knowingly made, used, or caused to be made or used, a false record or statement material to a false or fraudulent claim,

1 in violation of 31 U.S.C. § 3729(a)(1)(B)

2 23. As a direct and proximate result of Defendants' aforesaid conduct, the United States
3 suffered, and is entitled to recover, actual damages, trebled and with per-incident penalties and
4 statutory attorney fees.

6 **THIRD CAUSE OF ACTION**

7 **Knowingly Presented a False Claim for Payment or Approval, in Violation** 8 **of the California False Claims Act, Cal. Gov. C. § 12651(a)(1)**

9 24. The above allegations of Paragraphs 1-13, common to each and every cause of
10 action set forth herein, are incorporated herein by reference, the same as fully set forth within this
11 Cause of Action.

12 25. By virtue of the above conduct, Defendants have knowingly made, used, or caused
13 to be made or used, a false claim to get a false or fraudulent claim paid or approved by the State
14 of California, in contravention of the California False Claims Act (Cal. Gov. C. § 12651(a)(1)),
15 to the damage of the State of California, by causing it to pay out money it was not obligated to
16 pay.

17 26. As a direct and proximate result of Defendants' aforesaid conduct, the State of
18 California suffered, and is entitled to recover, actual damages, trebled and with per-incident
19 penalties and statutory attorney fees.

21 **FOURTH CAUSE OF ACTION**

22 **Knowingly Submitted a False Record or Statement to Get a False Claim Paid** 23 **or Approved, in Violation of the California False Claims Act, Cal. Gov. C. § 12651 (a)(2)**

24 27. The above allegations of Paragraphs 1-13, common to each and every cause of
25 action set forth herein, are incorporated herein by reference, the same as fully set forth within this
26 Cause of Action.

27 28. By virtue of the acts particularly described above, Defendants have knowingly
28 made, used, or caused to be made or used a false record or statement to get a false claim paid or

1 and receives funding for home programs from the North Bay Regional Center. The ABC
 2 administrator for payroll, Brian Clark, previously worked as a funding administrator for the
 3 North Bay Regional Center. ABC Psychologists, Administrators, Behaviorists and
 4 Regional Center Case Workers overlapped employment within the programs.

5 12. ABC and Palyo, by and through their management and employees, knowingly and
 6 unscrupulously over-billed, padded hours, billed excessive mileage, billed for mileage not driven,
 7 and charged for phantom services through: individual client contracts, client respite services,
 8 group services for clients, and respite services.

9 13. Defendant Palyo, three Program Directors, three Program Administrators, five
 10 Supervisors, and several other employees were fully aware of, and participated in, the billing
 11 fraud.

12 **Damages**

13 14. Over the last ten years, Defendants' false claims to federal, state, and local
 14 government entities in the form of fraudulent billing are estimated to be in excess of \$1.5
 15 million, before trebling and before application of per-incident penalties.

16 **Pre-Filing Service on the United States and the State of California**

17 15. Consistent with the pre-filing disclosure provisions of the False Claims Act and the
 18 California False Claims Act, Relator Cullen, prior to the filing of this Complaint, confidentially
 19 disclosed the facts underlying this Complaint to the United States Department of Justice and to
 20 the State of California Office of Attorney General.

22 **FIRST CAUSE OF ACTION**

23 **Knowingly Presented, or Caused to Be Presented, a False or Fraudulent Claim for** 24 **Payment or Approval, in Violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A)**

25 16. The above allegations of Paragraphs 1-13, common to each and every cause of
 26 action set forth herein, are incorporated herein by reference, the same as fully set forth within this
 27 Cause of Action.
 28

1 approved by the State of California, in contravention of the California False Claims Act (Cal.
 2 Gov. C. § 12651(a)(2)), to the damage of the Treasury of the State of California, by causing it to
 3 pay out money it was not obligated to pay.

4 29. As a direct and proximate result of Defendants' aforesaid conduct, the State of
 5 California suffered, and is entitled to recover, actual damages, trebled and with per-incident
 6 penalties and statutory attorney fees.

8 **FIFTH CAUSE OF ACTION**

9 **Failure of Beneficiary of False Claim to Disclose False Claim within Reasonable** 10 **Time after Discovery, in Violation of Cal. Gov. Code § 12651(a)(8)**

11 30. The above allegations of Paragraphs 1-13, common to each and every cause of
 12 action set forth herein, are incorporated herein by reference, the same as fully set forth within this
 13 Cause of Action.

14 31. If, notwithstanding the facts alleged above, the finder of fact determines that any
 15 Defendants' submission of the above-referenced false claims to the State of California was
 16 inadvertent, rather than knowing, the California False Claims Act, at Cal. Gov. C. § 12651(a)(8),
 17 imposes liability upon the beneficiary of an inadvertent submission of a false claim to the State
 18 or political subdivision, where such beneficiary subsequently discovers the falsity of the claim,
 19 and fails to disclose the false claim to the state or the political subdivision within a reasonable
 20 time after discovery of the false claim.

21 62. In such circumstance, Defendants each discovered the falsity of the subject
 22 claims, yet failed to disclose such falsity to the State of California within a reasonable time after
 23 discovery.

24 32. By engaging in the above-referenced conduct, Defendants, as beneficiaries of the
 25 false claim, failed to disclose false claim within reasonable time after discovery, in violation of
 26 Cal. Gov. Code § 12651(a)(8).

1 33. As a direct and proximate result of Defendants' aforesaid conduct, the State of
2 California suffered, and is entitled to recover, actual damages, trebled and with per-incident
3 penalties and statutory attorney fees.

4
5 **PRAYER FOR RELIEF**

6 Relator prays for the following relief:

7 1. Judgment in favor of the United States against all Defendants, by reason of the
8 violations of the False Claims Act as set forth above, in an amount equal to three times the
9 amount of damages the United States has sustained because of Defendants' actions, plus a
10 statutory civil penalty of not less than Six Thousand Dollars (\$6,000) for each false claim, plus
11 three times the amount of damages which the United States has sustained, pursuant to 31 U.S.C.
12 § 3729(a);

13 2. Judgment in favor of the State of California against all Defendants, by reason of the
14 violations of the California False Claims Act as set forth above, in an amount equal to three
15 times the amount of damages the State of California has sustained because of Defendants'
16 actions, plus a statutory civil penalty of not less than Five Thousand Dollars (\$5,000) for each
17 false claim, plus three times the amount of damages which the State of California has sustained,
18 pursuant to the California False Claims Act;

19 3. Award to Relator of the maximum amount allowed pursuant to 31 U.S.C. § 3730(d),
20 the Federal False Claims Act, on the United States' recovery;

21 4. Award to Relator of the maximum amount allowed pursuant to the California False
22 Claims Act, on the State of California' recovery;

23 5. Award to Relator all reasonable expenses which the Court finds to have been
24 necessarily incurred, plus reasonable attorneys' fees and costs;

25 6. Debarment of Defendants from contracting with the United States and the State of
26 California;

27 7. Trial by jury; and

28 8. Such other and further relief as the Court deems proper.

1 Dated: March 6, 2015

Respectfully submitted,

2 BARTLEY LAW OFFICES

3 ATTORNEYS FOR RELATOR
4 DEBORAH CULLEN

5
6 By:


DANIEL R. BARTLEY